



### **"Arising Out Of" the Employment**

According to s. 440.02(32), F.S., an injury is deemed to arise out of employment "if work performed in the course and scope of employment is the major contributing cause of the injury or death." Much litigation in workers' compensation has been devoted to the issue of whether an injury arose out of and occurred in the course and scope of employment. The First District Court of Appeal stated that in order to establish that an accident arose out of, and occurred in the course and scope of, the employment, it is "sufficient for the claimant to prove that her injury occurred in the period of her employment, at a place where she would reasonably be, while fulfilling her duties." Hillsborough County School Board v. Williams, 565 So.2d 852, 853-54 (Fla. 1st DCA 1990)

### **Going and Coming Rule**

According to Florida law, if an injury is suffered while going to or coming from work, the injury is not one which arises out of and in the course of employment. Section 440.092(2), F.S. However, if the employee was engaged in a "special errand or mission" for the employer while going to or coming from work, the injury is deemed to arise out of and in the course of employment.

Florida courts have stated that an employee is on a special errand if the journey was a substantial part of the service performed for the employer. D.C. Moore & Sons v. Wadkins, 568 So.2d 998 (Fla. 1st DCA 1990). Courts have held that an employee is on special errand where the employee is instructed by the employer to perform a special errand which grows out of and is incidental to his employment. Bruck v. Glen Johnson, Inc., 418 So.2d 1209, 1211 (Fla. 1st DCA 1982). A typical "special errand" exists when the employer calls the employee at home, and instructs him to deviate from his normal route into work to pick up an item needed for the purposes of employment that day. See Spartan Food Systems & Subsidiaries v. Hopkins, 525 So.2d 987 (Fla. 1st DCA 1988) (Employee directed to pick up drink cups on way into work).

### **When Law Enforcement Officers Are Within the Course of Employment**

Section 440.091, F.S., is a special provision relating to officers vested with the authority to bear arms and make arrests, which sets forth the circumstances under which such officer is deemed to be in the course and scope of employment. This provision creates a limited exception to the "going and coming" rule for these officers. Pursuant to this section, if an employee:

- is elected, appointed, or employed full time by a municipality, the state, or any political subdivision, is vested with authority to bear arms and make arrests, and whose primary responsibility is the prevention or detection of crime or the enforcement of penal, traffic, or criminal laws of the state;
- was discharging that primary responsibility within the state; and
- was not engaged in services for a private employer;

the employee is deemed to have been acting in the course and scope of employment, regardless of whether he or she is going to or coming from work. If an officer meets these three criteria and is injured, he or she will be covered by workers' compensation.

### **Case Law Relating to Law Enforcement Officers**

Cases construing s. 440.091, F.S., focus on whether the officer was discharging his or her "primary responsibility" at the time of the accident. See e.g., Palm Beach County Sheriff's Office v. Ginn, 570 So.2d 1059 (Fla. 1st DCA 1990) (although an officer is on call for duty and has police radio and other indicia of authority, these factors are not dispositive; the issue is whether the officer was carrying out his "primary responsibility").

In Hanstein v. City of Fort Lauderdale, 569 So.2d 493 (Fla. 1st DCA 1990), for example, a patrol officer was on his way to work in his personal vehicle when he observed a truck making an improper turn. The officer testified that he made a "conscious decision" to issue a citation for the violation, but before he could do so, his vehicle was struck by the truck. Because department policy prohibited an officer from issuing a citation for an accident in which the officer is involved, the officer could not issue a citation. The court held that although the officer did not actually take affirmative action, the officer was performing his primary responsibility because his responsibilities included enforcement of traffic laws. Id. at 494. As such, the officer's injuries were covered by workers' compensation.

However, in City of Fort Lauderdale v. Abrams, 561 So.2d 1294 (Fla. 1st DCA 1990) a forensic detective was on her way to work in her personal vehicle when she was struck from behind at a red light. Id. at 1294. Because the forensic detective was not investigating a crime or enforcing the law when she was struck from behind, the court stated that she was not carrying out her primary responsibility. As a result, the court held the injury did not arise out of or within the course and scope of her employment. Id. This detective's injuries were not covered by workers' compensation.

In City of Lakeland v. Schiel, 687 So.2d 1323 (Fla. 1st DCA 1997), an on-duty Special Investigation Division (SID) officer driving an unmarked vehicle was denied workers' compensation benefits when he was struck by a van while checking on his daughter who had just been in a car accident. Because it was not protocol for SID officers to investigate traffic accidents, the court held that claimant was on a "personal errand at the time of his injury and was not acting within the course or scope of his employment or discharging the duties of a law enforcement officer." Id. at 1324.

#### **Law Enforcement, Correctional, and Correctional Probation Officers' Duty to Act**

"Officer" is defined in s. 943.10(14), F.S., as "any person employed or appointed as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer." The term "law enforcement officer" is defined in s. 943.10(1), F.S., as "any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state."

This term would include all sworn law enforcement personnel: Marine Patrol officers, Game and Freshwater Fish Commission wildlife officers, Alcoholic Beverages and Tobacco agents, Department of Law Enforcement agents, Department of Insurance's fraud enforcement agents, Department of Transportation commercial vehicle inspection agents, State Fire Marshall investigators, Department of Agriculture marks and brands inspection agents, capitol police,

lottery investigators, corrections officers, correctional probation officers, police officers, and sheriff's deputies.

There is no provision in Florida law which places a legal obligation on law enforcement, correctional, or correctional probation officers to take affirmative action when they are off-duty. However, inquiries by staff to several sheriffs and police department representatives indicate that most agencies, through internal written or unwritten policy, require their officers to be "on duty" 24 hours a day. They are required to listen to their police/sheriff radio while in their department vehicle and to be on the lookout for and aware of criminal activities when going to or coming from work. These law enforcement officers, who have the authority to make arrests when off duty, would have a responsibility to take reasonable affirmative action any time they witness a criminal act.

Staff inquiries also indicate that the majority of correctional officers are not sworn law enforcement officers and do not have the authority to make arrests when off duty. Also, staff inquiries reveal that correctional probation officers have the authority to make arrests, but this authority is limited to the offenders on probation.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 440.092, F.S., to provide that a law enforcement, correctional, or correctional probation officer, who is going to or coming from work in an official law enforcement or corrections vehicle, is considered to be engaged in a special errand or mission for the officer's employer, for purposes of entitlement to workers' compensation benefits. The circumstances in which a law enforcement, correctional, or correctional probation officer is deemed to be acting within the course and scope of employment would be broadened. The bill extends workers' compensation coverage for all sworn officers from all state agencies, in addition to full time, part time and auxiliary police officers and deputies.

The effect of the bill is best illustrated in the following hypothetical:

A deputy sheriff is off duty and on the way home. While stopped at a stop light 2 blocks from home, the deputy sheriff is injured when a car struck the rear of his vehicle. As a fringe benefit of his employment, the deputy sheriff is provided with a sheriff's office vehicle, which he is allowed to use on personal business and which he was using at the time of the accident. Prior to the accident, the deputy sheriff had been monitoring the police radio in the vehicle, in the event that he might be called on duty to assist with some law enforcement matter. Additionally, the deputy sheriff is a member of the sheriff's office emergency field force, which requires him to possess and monitor a beeper at all times, which he was monitoring at the time of the accident.

Is the law enforcement officer's injury covered by workers' compensation?

*Current Law - Probably No*

Under current law, the relevant issue in this hypothetical would be whether the law enforcement officer was carrying out his primary responsibility which is the "prevention or detection of crime

or the enforcement of the penal, criminal, traffic, or highway laws of the state." The First District Court of Appeal has held in several cases with similar facts that the law enforcement officer was not carrying out his or her primary responsibility, and therefore was not acting within the course and scope of employment. Thus, it is probable that the deputy sheriff would not recover workers' compensation benefits.

*The Bill - Yes*

Under the bill, the relevant issue is whether the employee is a law enforcement officer as defined in s. 943.10(14), F.S., and whether the employee is going to or coming from work in an official law enforcement or corrections vehicle. There presumably would be no inquiry into whether the law enforcement officer is carrying out his or her primary responsibility. As such, because the deputy sheriff is a law enforcement officer and because he was coming from work in a law enforcement vehicle, he would be covered by workers' compensation.

**Section 2.** The bill provides for an effective date of July 1, 1999.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution provides that counties and municipalities are not bound by general laws that require them to spend funds or to take an action that requires the expenditure of funds unless the legislature determines that the law fulfills an important state interest or meets other select exceptions, such as an insignificant fiscal impact. There will likely be a fiscal impact on cities and counties, due to a broadened scope of coverage of their sworn law enforcement employees. The amount will be determined by the number and severity of future claims, and the premium increase, if any, resulting from covered claims. The amount is indeterminate and it is unknown whether the amount is significant enough to trigger the protection of Article VII, s. 18.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

This bill extends workers' compensation coverage to law enforcement, correctional, and correctional probation officers for accidents that previously were not covered by workers' compensation. Therefore, this bill may result in an increase in the premiums for workers' compensation coverage. Additionally, this bill may result in a shifting of some costs from health and disability insurance policies to workers' compensation insurance. The amount of increased premium and the extent of the cost shifting is indeterminate, because it is not known how many additional claims would result from the increased availability for workers' compensation coverage created by this bill.

According to the Department of Insurance, this bill could result in more than just a shifting of costs from group health care to workers' compensation. Medical benefits are more expensive under workers' compensation compared to group health medical benefits, since there are no deductibles or co-payments. Also, many types of medical expenses and services not provided by group health are routinely required to be paid under workers' compensation. In addition to medical costs, injured officers would be eligible for indemnity (lost time) benefits, impairment benefits, and death benefits that are not available under group health.

Further, the fiscal impact of this bill is also indeterminate, because it is possible that state and local governments, fearing potential increased costs, could discontinue the practice of allowing officers to drive official vehicles to their homes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill covers only "official law enforcement or corrections vehicles", and so it presumably covers only "marked" vehicles. This distinction may exclude some sworn state agency personnel from coverage, and will also likely exclude officers driving undercover, unmarked police vehicles from coverage.

**VIII. Amendments:**

None.